

REMARKS

Applicants thank the Office for withdrawing the rejection of the claims as obvious over Nakatani (U.S. 7,238,689) in view of Ziemer (U.S. 2003/0130120) set forth in the Office Action of January 26, 2009. Applicants submit concurrently herewith a complete copy of the Declaration of Makoto Fujinami submitted to the Office on April 27, 2009 and subsequently faxed to the Examiner on December 1, 2009.

The Office now rejects the claims as obvious under the meaning 35 U.S.C. § 103(a) over Nakatani in view of Plant (WO 2006/024820). Applicants traverse the rejection on the ground that the Plant reference does not qualify as prior art to the present application.

The present application is a §371 of PCT/JP03/10073 which has an international filing date of August 7, 2003. The U.S. effective filing date of the present application is therefore August 7, 2003. The Plant reference has a publication date of March 9, 2006 and an international filing date of August 17, 2005. The Plant reference fails to qualify as prior art to the present application under any of 35 U.S.C. §§ 102(a), 102(b), or 102(e). Applicants request withdrawal of the rejection.

Obviousness-Type Double Patenting

The Office maintained the rejection of the claims under obviousness-type double patenting in view of co-pending 11/948,542. As a consequence of the withdrawal of the rejections in view of Nakatani and Plant, the only remaining rejections in the present application should be the obviousness-type double patenting rejection. The present case is the senior case thus withdrawal of the obviousness-type double patenting from the present rejection and entry into the co-pending application is appropriate. See M.P.E.P. § 804(I)(B)(1) which states in relevant part:

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the

earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Applicants thus submit that withdrawal of the obviousness-type double patenting rejection in the present application is appropriate.

Declaration under 37 C.F.R. § 1.132

Applicants submit again the Declaration of Makoto Fujinami submitted earlier with Applicants' response filed on April 27, 2009. The Declaration further evidences the non-obviousness of the present claims. The Declaration shows that the combination of components (i) and (ii) provides a greater than expected herbicidal effect in comparison to the results calculated according to Colby's formula (see paragraph no. 8 of the Declaration).

Applicants thus submit the rejection should be further withdrawn.

Request for Rejoinder

Page 2 of the December 17, 2009 Office Action indicates that Claims 2 and 3 have been withdrawn. Applicants point out that page 1 of the Declaration does not identify any claims as withdrawn. If in fact Claims 2 and 3 are presently withdrawn from prosecution, Applicants submit that rejoinder and allowance is appropriate in view of the remarks above regarding the rejection over the cited art (i.e., Nakatani and Plant) and further in view of Applicants' arguments traversing the rejection for obviousness-type double patenting.

Upon a determination that the subject matter of Claim 1 is allowable, rejoinder and allowance of those claims dependent from Claim 1 is likewise appropriate.

Information Disclosure Statement

Applicants submitted an IDS on September 24, 2009. The IDS cited two references. One of the references (JP 2002-518303) corresponds to an earlier-submitted reference (U.S. 6,534,444). The other reference (JP 2002-502408) was a newly submitted reference. The September 24, 2009 IDS included an English translation of an Office Action from a corresponding Japanese patent application. The Japanese Office Action cited to the JP 2002-502408 reference as relevant art.

Applicants' September 24, 2009 PTO-1449 was returned with the December 17, 2009 Office Action with a line drawn through the JP 2002-502408 reference indicating that this reference was not considered. The December 17 Office Action provided no basis for the Office's refusal to consider the JP 2002-502408 reference. Applicants submit that the Office is obligated to consider the reference during the prosecution of the present application for the reason that the reference was timely submitted together with a corresponding Japanese Office Action which cited the reference as relevant art.

Applicants request the Office return a copy of Applicants' September 24, 2009 IDS acknowledging consideration of the JP 2002-502408 reference.

For the reasons discussed above in detail, Applicants submit that withdrawal of the rejections and the allowance of all now-pending claims is appropriate.

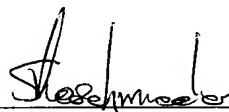
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.
Norman F. Oblon

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/09)



Stefan U. Koschmieder, Ph.D.
Registration No. 50,238